

AMENDING THE SECURITIES LAWS TO PERMIT CHURCH  
PENSION PLANS TO BE INVESTED IN COLLECTIVE  
TRUSTS

SEPTEMBER 3, 2003.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,  
submitted the following

R E P O R T

[To accompany H.R. 1533]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1533) to amend the securities laws to permit church pension plans to be invested in collective trusts, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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#### PURPOSE AND SUMMARY

H.R. 1533 amends the Federal securities laws to grant church plans, as described in section 3(c)(14) of the Investment Company Act of 1940, the ability to invest their assets in collective trust funds, as described in section 3(c)(11) of the Investment Company Act. The legislation thus provides parallel treatment under the securities laws of the assets of church plans to the treatment afforded the assets of governmental plans, as described in section 3(a)(2)(C) of the Securities Act of 1933. It permits Church Plan assets to be invested in a collective trust fund that also holds assets of certain trusts which meet the requirements for qualification under section 401 of the Internal Revenue Code and governmental plans.

#### BACKGROUND AND NEED FOR LEGISLATION

Many pension plans diversify their holdings by investing a portion of their portfolios in rental real estate and other private investment offerings. Frequently, pension plans make these investments by joining other pension plans in a collective trust fund that is created and managed by a financial institution solely as an investment vehicle for pension programs. Current law prohibits Church Plans from participating in these arrangements.

Section 3(c)(11) of the Investment Company Act of 1940 excludes, among other things, any collective trust fund that consists of the assets of pension plans that meet the qualifications of section 401 of the Internal Revenue Code or governmental plans, or both, from the definition of investment company under the Investment Company Act. This reflects the change made in 1980 by Congress to broaden the Investment Company Act's exclusion of collective trust funds to permit investment in those funds by governmental plans. Section 3(a)(2) of the Securities Act of 1933 and section 3(a)(12)(c) of the Securities Exchange Act of 1934 provide exemptions from various registration and disclosure rules for collective trust funds. However, church plans are not covered by these provisions.

Church plans today make investments similar to those permitted for Collective Trust Funds. However, the inability of church plans to participate with trusts and governmental plans in collective trust funds unnecessarily increases the costs for these investments and makes it more difficult for church plans to diversify their investments.

#### HEARINGS

No hearings were held on this legislation in the 108th Congress.

#### COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises met in open session on July 10, 2003, and approved H.R. 1533 for full Committee consideration, without amendment, by a voice vote.

The Committee on Financial Services met in open session on July 23, 2003, and ordered H.R. 1533 reported to the House with a favorable recommendation by a voice vote.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The administrators of church plans will use the authority granted by this legislation to diversify their holdings and increase the returns for their investors.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 27, 2003.*

Hon. MICHAEL G. OXLEY,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1533, a bill to amend the securities laws to permit church pension plans to be invested in collective trusts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa Zimmerman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*H.R. 1533—A bill to amend the securities laws to permit church pension plans to be invested in collective trusts*

H.R. 1533 would allow churches to pool their pension funds for the purposes of investment. Current law prohibits churches from pooling pension funds for this purpose. CBO estimates that implementing H.R. 1533 would have no effect on the federal budget.

H.R. 1533 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Melissa E. Zimmerman. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the defense and general welfare of the United States), and clause 3 (relating to the power to regulate foreign and interstate commerce).

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Conforming amendments for church plan participation in collective funds*

This section amends section 3(c)(11) of the Investment Company Act of 1940, section 3(a)(2) of the Securities Act of 1933, and section 3(a)(12)(c) of the Securities Exchange Act of 1934 to permit church plan assets to be invested in collective trust funds. These amendments to the Federal securities laws permit church plan as-

sets to be included in a collective trust fund that also includes assets of trusts or governmental plans.

The Committee does not intend that this legislation be construed as modifying the Internal Revenue Code requirement that a church plan be maintained by a church or a convention or an association of churches, and does not intend to modify the securities law requirement that a collective trust fund must be maintained by a bank or financial institution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**INVESTMENT COMPANY ACT OF 1940**

\* \* \* \* \*

**TITLE I—INVESTMENT COMPANIES**

\* \* \* \* \*

**DEFINITION OF INVESTMENT COMPANY**

**SEC. 3. (a)(1) \* \* \***

\* \* \* \* \*

(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(1) \* \* \*

\* \* \* \* \*

(11) Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986; or any governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933; or any collective trust fund maintained by a bank consisting solely of assets of [such trusts or governmental plans, or both] *one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection*; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account.

\* \* \* \* \*



## SECURITIES ACT OF 1933

## TITLE I

\* \* \* \* \*

## EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) \* \* \*

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, [or] (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in clause (A), (B), or (C) of this para-

graph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

\* \* \* \* \*

## SECURITIES EXCHANGE ACT OF 1934

### TITLE I—REGULATION OF SECURITIES EXCHANGES

\* \* \* \* \*

#### DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) \* \* \*

\* \* \* \* \*

(12)(A) \* \* \*

\* \* \* \* \*

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2)

of such Code, [or] (iii) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.

\* \* \* \* \*

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) \* \* \*

\* \* \* \* \*

(g)(1) \* \* \*

(2) The provisions of this subsection shall not apply in respect of—

(A) \* \* \*

\* \* \* \* \*

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, [or] (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

\* \* \* \* \*